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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,544	05/31/2007	Walter Turner	HO-P03333US0	2548

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EXAMINER	
SAYALA, CHHAYA D	
ART UNIT	PAPER NUMBER
1781	

NOTIFICATION DATE	DELIVERY MODE
08/20/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/597,544	TURNER, WALTER	
	Examiner	Art Unit	
	C. SAYALA	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/23/10,11/29/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In these claims, the ranges should indicate whether the percentage is by weight or by volume.

Claim Rejections - 35 USC § 102/Claim Rejections - 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 01/50882.

The patent shows starch in an amount 20-65%, cellulose in an amount 2-15% by wt, (page 5, lines 23-24, page 6, lines 17, 22, Page 7, lines 20-30 shows the moistened components being extruded and a gelatinized starch matrix being formed. The level of gelatinization is not given. Figure 1 shows that chewing times for the inventive product was high. See the claims which are similar to those herein. The instant specification shows that the level of gelatinization was calculated using Ewers polarimetric method (see ¶[0076]). The Office does not have the resources to prepare prior art products and use the method described at ¶[0076] and determine the gelatinization level and that burden is being shifted to applicant to show that the claims are patentably distinguished. However, the amounts of starch and fiber are the same, the product has longer chew times and it is being held that the claims have been met. Note too that the product does not include the plasticizer.

3. Claims 1-12 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Townsend et al. (US Pub 2004/0253342).

Townsend et al. disclose a pet food product that includes starch such as rice ¶[0097], in an amount 30-70 wt% ¶[0105], Cellulose is used as the fiber and in an amount 0-10 wt%, ¶[0099] and ¶[0107]. The product is said to include longer chew

times,¶[0039]. The product is extruded and would naturally gelatinize while being cooked. The instant specification shows that the level of gelatinization was calculated using Ewers polarimetric method (see ¶[0076]). The Office does not have the resources to prepare prior art products and use the method described at ¶[0076] and determine the gelatinization level and that burden is being shifted to applicant to show that the claims are patentably distinguished. However, the amounts of starch and fiber are the same, the product has longer chew times and it is being held that the claims have been met. Note too that the product does not include the plasticizer.

4. Claims 1-6, 8-11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 03/088740.

The product shows starch in an amount 15-90 wt% page 3, lines 5-7, fiber in an amount 1-35 wt% in the form of cellulose (page 5, lines 5-9). The abstract shows that the product has long lasting times. The mixture is extruded (page 4, lines 1-2) and therefore it can reasonably be expected that the starch gelatinizes as it cooks. The instant specification shows that the level of gelatinization was calculated using Ewers polarimetric method (see ¶[0076]). The Office does not have the resources to prepare prior art products and use the method described at ¶[0076] and determine the gelatinization level and that burden is being shifted to applicant to show that the claims are patentably distinguished. However, the amounts of starch and fiber are the same, the product has longer chew times and it is being held that the claims have been met.

5. Claims 1-2, 8 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nie et al. (US Pub 2004/0086616).

Nie et al. show a long lasting chew that contains 50-80% starch. The starch is pre-gelatinized. See ¶[0012]. The mixture is extruded and therefore it can reasonably be expected that the starch gelatinizes as it cooks. The instant specification shows that the level of gelatinization was calculated using Ewers polarimetric method (see ¶[0076]). The Office does not have the resources to prepare prior art products and use the method described at ¶[0076] and determine the gelatinization level and that burden is being shifted to applicant to show that the claims are patentably distinguished. However, the amounts of starch and fiber are the same, the product has longer chew times and it is being held that the claims have been met.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/
Primary Examiner, Art Unit 1781